

Dismissal for Failure to Submit Required Documents

11 U.S.C. § 521

BR Act Section 316 of P.L. 109-8

This section mandates that a chapter 7 or 13 case “shall be automatically dismissed effective on the 46th day after the date of the filing of the petition” if the debtor fails to file “all information required by 11 U.S.C. § 521(a)(1)” within 45 days of filing. This section also permits any party in interest to request the court to enter an order dismissing the case, with the requirement that the order be entered not later than five days after the request.

The statutory intent of this section, and how it affects the status of a case, is unclear. Many of the issues implicated by this section may need to be determined by case law. However, local courts must determine an approach to adopt to implement the provisions of this section. In doing so, questions to be considered include:

- *does “automatic” dismissal mean that the case is dismissed by operation of law on the 46th day, without further action by the court, the trustee, or any creditor?;*
- *should “all information” to be construed to mean all documents required to be filed under 521(a)(1) (e.g., list of creditors, schedules, and statement of financial affairs), or should it be construed to mean all of the information that is required on each of those documents (i.e., is the case dismissed if the debtor submits all of the documents but omits one or more information field(s) from a particular document)?;*
- *can a the party only request an order of dismissal after the 45 days has run and the case has already been automatically dismissed, or can the party request the order of dismissal after the court’s deficiency notice deadline has passed, but before the 45 days have run?*

Set forth below are several options for courts to consider in implementing this provision:

I. CASE FILED WITHOUT OFFICIAL FORMS, SCHEDULES AND STATEMENT

A. Clerk Issues Deficiency Notice

1. The court-imposed deadline is shorter than the 45 days from the date the petition is filed;
2. If the deadline arrives and the documents are not filed, the clerk should generate an order of dismissal to be signed by the judge;
3. If the court does not set an earlier deficiency date, the order of dismissal should be generated for signature by the judge, incorporating the 46th day as the effective date of dismissal, **OR**.

B. Court Does Not Issue Deficiency Notice, Takes No Action Unless Requested

by Trustee/Creditor

- Under this approach, the clerk's office would not have responsibility for checking to ensure compliance with § 521. The determination whether the case will be dismissed would be a judicial matter which would come before a judge upon action by a party, **OR**
- C. Court Adopts Local Rule/Standing Order Regarding Consequences of Failure to File**
 - The court could adopt a standing order or local rule stating, e.g., that if an individual debtor in a case under chapter 7 or chapter 13 fails to file all information required under 11.U.S.C. § 521 (or § 1321) and no motion for an extension of time has been filed, the Trustee or United States Trustee will file a notice stating that debtor has failed to comply with the requirements of § 521 (or § 1321) and the case will be dismissed without further notice or hearing, **OR**
- D. Court Issues an Order to Show Cause (OSC) Why the Case Should not be Dismissed for Failure to File Official Forms, Schedules, and Statements**
 - Rule 1007 (c) of the Interim Rules of Bankruptcy Procedure requires that schedules, statements, and other documents shall be with the petition or within 15 days thereafter. Thus, on the 16th day following filing, the court can issue an OSC why the case should not be dismissed for failure to submit required schedules, statements, and other official forms.

II. Party Requests Order of Dismissal Under 11 U.S.C. § 521(i)(2)

1. If not already entered, and if the debtor has not filed a motion to extend the time to file the required documents, the court shall enter order of dismissal within 5 days of the request.
2. When a party requests an order of dismissal and the 45 days (or shorter time frame) has already expired, no notice and hearing is required, as the case will be dismissed pursuant to 11 U.S.C. § 521(i)(2).
3. The Judge signs an order dismissing the case, or, in the alternative, the dismissal is entered on the docket.

III. Trustee Motion to Not Dismiss Case

1. Under § 521(i)(4), the Trustee may move to request the court to decline to dismiss the case if, after notice and hearing, the court finds that:
 - a. the debtor attempted in good faith to file all the required information, and
 - b. The best interests of the creditors would be served by administration of the case.

2. The motion by the Trustee must be filed before any of the applicable time periods in § 521(i)(1),(2), or (3) have expired.